IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.655 OF 2001

Shamshad Alam Amirulla Shaikh
Age 27 years
C/o.Bombay Mattresses,
Shop No.1, Johanputra Compound,
Gowalia Tank Road, Nana Chowk,
Bombay.
(At present in Yerwada Central Prison
Pune. Prisoner No.C-11908.) ...Appellant

Vs.

The State of Maharashtra
(At the instance of Gamdevi Police
Station) ...Respondent

Mrs. S.S.Kaushik, Advocate for Appellant
Mr.K.V.Saste, A.P.P for the State

CORAM: SHRI D.G.DESHPANDE &
SMT. ROSHAN DALVI, JJ.
DATED: 15TH NOVEMBER, 2006

JUDGMENT (P.C. SMT. ROSHAN DALVI, J.)

1. The Appellant was charged with having committed murder of one Imtiyaz Raju Khan on 9th January, 1998 at 1.30 a.m just outside Jobanputra Compound, Nana Chowk, Mumbai punishable under Section 302 of the Indian Penal Code. The accused has also been charged with the offence of being in possession of Arms under Section 25(1B) (b) of the

Arms Act r.w 34 of Indian Penal Code and under Section 135 of Bombay Police Act. He has been convicted only under Section 302 of the Indian Penal Code. No appeal is preferred by the State.

2. It is the case of the prosecution essentially through the evidence of P.W.2, the eye witness, that the accused along with the absconding accused Pappu came at the aforesaid time and place when the deceased was sleeping outside the shop of Bombay Mattresses in Jobanputra Compound, and caused fatal injuries upon his neck as well as abdomen as also several other injuries on his body causing the deceased to fall off the bench.

3. It is the prosecution case as set out in the appeal itself, that the appellant had suspected that the deceased had sexual intercourse with his wife and sister at his native place when the appellant was in Mumbai. So the appellant had grudge against the deceased and had taken revenge to eliminate him. Consequently the incident which took place in the night between 9th and 10th of January, 1998 in the month of Ramzan has been brought out essentially in the evidence of P.W.2 who was his colleague and an eye witness.

4. The learned A.P.P has relied upon the eye witness account

along with the evidence of the Medical Officer P.W.4 who conducted the Postmortem examination and found as many as eleven external and two internal injuries.

5. It is argued by Mrs. Kaushik, learned Advocate for the Appellant that the evidence of P.W.2 the eye witness is not worthy of credence due to several inconsistencies and contradictions. She also argued that the recovery of the weapon is suspect and not made in accordance with law so that, that evidence must be discarded and that several injuries shown in the medical evidence are not sufficient to cause the death of the deceased.

6. The Prosecution case as well as impugned judgment of the learned Additional Sessions Judge, Greater Mumbai has to be considered necessarily upon the evidence of P.W.2 corroborated by the Medical Report. In addition thereto the spot panchanama along with the seizure of the weapon left at the spot and the clothes of the deceased containing his blood which was sent to the Chemical Analiser and the Chemical Analiser's report showing the blood group “O” of the deceased on the knife which was seized from the spot is to be further considered as corroborative for its value, if any.

7. The evidence of P.W.2 is that he and the deceased used to

sleep in front of the shop of making mattresses where they worked since they both had no residence in Mumbai. P.W.2 also knew the accused whose native place was close to his native place and who also worked in a nearby shop which also made mattresses. His deposition shows that the accused had gone to his native place and had returned to Mumbai only prior to the date of the incident. Since he also did not have any residence in Mumbai he also used to sleep in front of his shop. Hence, the deceased, the accused as well as the eye witness to the incident were all sleeping together in Jobanputra Compound. P.W.2 is therefore, a natural witness.

8. His further evidence is that at about 1.30 a.m. On 9th January, 1998 whilst he was fast asleep the deceased fell on him from the bench where he was sleeping. He saw one person running towards Gwalior Tank holding knife in his hand. He saw him causing injury to the throat (neck) of the deceased by knife looking like hacksaw blade. He also saw the accused assaulting the deceased on the abdomen with a knife. Two other brothers of the accused were holding the deceased at that time.

9. When he went to intervene and save the deceased the accused tried to assault him from which he saved himself.

He heard the cries of the deceased. Aside from the aforesaid injuries which proved to be fatal he has deposed about other injuries with which we are not concerned. He rushed to the residence of the owner of his shop P.W.1 who lived close by and who came there immediately and went to lodge complaint upon seeing the deceased. The deceased was removed to the hospital by Police who arrived immediately. The deceased was declared dead on admission to the hospital.

10. The cross examination of this witness (P.W.2) shows that the deceased fell down initially on his brother. It shows that the feet of the deceased had fallen on P.W.2 which made him suddenly wake up. The incident was over within two to four minutes. There is absolutely no cross examination upon the actual assault on the abdomen made by the accused who was witnessed by the P.W.2. The cross examination further clarified that the other person who had run away was seen by P.W.2 inflicting blow by means of sharp weapon on the neck of the deceased. P.W.2 later learned that his name was Pappu/Munna. The specific deposition of P.W.2 about the specific injury caused by the absconding accused has rather been clarified in his cross examination.

11. The fact that the deceased was sleeping on a level little higher than the P.W. 2 was sleeping, is also made out in the cross examination. The cross examination shows that the deceased was sleeping on Otla which has been stated to be a bench or Bakda in the examination-in-chief. It does not matter how the place is described. What matters is that from a higher level the deceased fell down to lower level where P.W.2 as well as his brother were sleeping and fell on both of them. The cross examination has further clarified that the deceased was sleeping 2 ft. from the Otla. The width of 2 ft. is such close distance that would in fact show how the deceased fell on the bodies of P.W.2 and his brother upon being attacked.

12. The case of the prosecution has been amply made out by the aforesaid evidence that has been considered in detail by the learned trial Judge.

13. The corroboration of the evidence is found in the deposition of the Doctor who has narrated the specific injuries. There are atleast seven injuries on the neck of the deceased. These are stated to have been caused by the said Pappu Munna, the absconding accused. The evidence of the Doctor shows that those are fatal injuries.

14. The further injury is penetrating wound in the abdomen which has been described in detail by the Doctor (P.W.4). This external injury has to be read alongwith the internal injuries described by the Doctor. That is described as a penetrating wound on the abdomen piercing in the epigastric region, and then cutting the pancreas and the pancreatic artery. Consequently the Doctor noticed frank blood in the peritoneum cavity. This injury is also deposed to be a fatal injury sufficient to cause the death of the deceased. The cause of death is stated to be by shock and hemorrhage following throat injury and stab injury on abdomen and is described as the stab injury on the abdomen. This matches the evidence of P.W.2 perfectly.

15. Upon the police being called the spot panchanama was prepared. P.W.5 has deposed about that exercise. Inter alia a blood stained handle of a knife and a bent blood stained knife were seized from the spot. The C.A's report shows the blood group of the deceased to be “O” group. That was the blood group of the blood on the handle and the knife.

16. The case of the prosecution of murder of the deceased by the accused is clearly made out. The learned trial Judge has correctly martialled the evidence and come to the right conclusion relating to the sentence. Consequently the

Appeal is dismissed. The conviction and sentence imposed by the learned trial Judge upon the accused for committing offence punishable under Section 302 of the Indian Penal Code is confirmed.

(SMT.ROSHAN DALVI, J.) **(SHRI. D.G.DESHPANDE, J.)**